



## HOUSE APPROPRIATIONS SUBCOMMITTEE HEARING ON THE CFTC BUDGET

### OVERVIEW

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Today, the House Appropriations Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies held a hearing on the Budget of the Commodity Futures Trading Commission (CFTC or Commission).

### Key Takeaways

- Chairman Massad expressed his desire to take his time on the final position limits rulemaking to ensure that historically accepted *bona fide* hedging practices can continue for commercial end-users.
- When asked about the policy justification for proposed Regulation Automated Trading's (Reg AT) requirement for firms to retain source code information subject to inspection by the Department of Justice (DOJ) and the CFTC without a subpoena, Massad said he is open to industry comments on this matter and will work to maintain confidentiality of proprietary information.
- Massad indicated that he was open to any method that will obtain additional funding for the Commission, whether it is additional money through Appropriations process or via user-fees on market participants.
- Many Congressmen urged the CFTC *not* to lower the swap dealer *de minimis* threshold, consistent with the 2016 Omnibus Bill.

### SUMMARY

#### Opening Statement and Testimony

##### Chairman Robert Aderholt (R-AL)

- The White House FY 2017 budget request would increase the agency's budget by 32%.
- Since Dodd-Frank, CFTC leasing costs increased by 74% and its leases were negotiated based on funding assumptions rather than actual appropriations.

##### Ranking Member Sam Farr (D-CA)

- Hopes the Committee can begin to fund the CFTC so it can do the job mandated by Dodd-Frank.

##### [CFTC Chairman Tim Massad](#)

- Sensible regulation requires resources, and the Commission's resources are not commensurate with its additional responsibilities.
- This budget request is a good investment to ensure U.S. derivative markets continue to work for our farmers, ranchers, and everyday Americans.

### Discussion

## **Position Limits Rulemaking**

*Yoder (R-KS):* The position limits rule proposal dramatically narrows historically accepted *bona fide* hedging practices and would raise hedging costs for end-users – what are you doing to ensure traditional hedgers have a range of risk management tools available to hedge their business risks?

*Massad:* The Commission will ensure *bona fide* hedging is allowed in the final rule. The agency is also looking at other aspects of the rule such as the calculation of deliverable supply estimates. We want to get this rule right and will take the time to get it right.

## **Reg AT**

*Yoder:* Proposed Reg AT makes source code information subject to inspection by the DOJ and CFTC without a subpoena. Why is such broad access necessary when the government has problems securing confidential information? Why not just continue the practice of obtaining a subpoena based on probable cause? *Massad:* The CFTC is merely telling firms to preserve their source code information, so that events can be reconstructed when something goes wrong. We are soliciting comments and are perfectly willing to help protect confidentiality, whether it is by subpoena or other methods.

## **User-Fees**

*DeLauro (D-CT):* Thoughts on user-fees to offset the CFTC's budget. Would a small user-fee impose any real burden on market participants? *Massad:* The Commission could certainly be funded by some type of user-fee that could be phased-in. Almost every other regulator has user-fees, and this allows market participants to pay the costs as opposed to the American public. My goal is to get more money for the agency somehow, and where it comes from is up to Congress (appropriations versus user-fees).

## **Swap Dealer *De Minimis* Level**

*Yoder:* Does the CFTC intend *not* to lower the swap dealer *de minimis* level, as would be consistent with the intentions expressed in the Omnibus bill? *Massad:* With more swap data available, the Commission released a study on the impacts of a lower threshold. In the future and before the threshold level is automatically decreased in 2017, the Commission will issue a final study with a recommendation for the Commission. This requires a separate rulemaking and the CFTC will solicit public comments. The study will be completed before December, 2017.

*Valadao (R-CA):* Will there be retroactive application if a lower threshold level is proposed? *Massad:* No.

*Aderholt:* Update on the comments received from the preliminary study? *Massad:* Comments vary in recommending whether we should keep or lower the threshold.

## **Cyberserucity**

*Young (R-IA):* Required to report cyber attacks to Congress and other agencies? How do you coordinate with other agencies regarding cybersecurity? Has the CFTC been hacked? *Massad:* Yes, we will certainly report cyber attacks. The government and financial regulators are coordinating and sharing information by establishing information sharing systems. Private industry can also share information anonymously through newly implemented systems. The CFTC has not been hacked and our systems are good, however, we must continue to maintain investments in technology.

## **CCP Equivalence Agreement**

*Yoder:* Explain what this agreement means for market participants wanting access to U.S. markets? *Massad:* This agreement sets forth a process in which Europe can deem U.S. CCPs equivalent, and

where the CFTC can offer EU CCPs substituted compliance. It allows clearing services to be provided at either jurisdiction with confidence.

*Pingree (D-ME):* Does the CFTC have enough resources to carry out this agreement? *Massad:* The CFTC does not want to create any regulatory arbitrage within CCPs. We need resources to ensure we can oversee clearinghouse risk. The agency must now integrate uncleared swaps (and cleared swaps) into risk examinations and is trying to build out a system to identify a troubled firm and its exposures across jurisdictions to be able to act in a timely manner.

### **Review of Regulations**

*Young:* Does the CFTC review outdated regulations? If so, can you share that information with the Committee? *Massad:* Yes, happy to share this information.

### **Accounting Irregularities**

*Palazzo (R-MS):* What are you doing to address this issue? *Massad:* We are committed to permanently fixing this accounting error.

*Aderholt:* Since Dodd-Frank, annual leasing costs increased by 74% while personnel increased by only 18%. Over ten years, over \$94 million in additional funds were spent on leasing. What is this additional unoccupied space currently being used for? *Massad:* Overall occupancy rate is at 85% today. The Kansas City office has excess space, but the CFTC does not have authority to sublease.

*Valadao:* The inspector general found \$132,000 in overhead costs for one employee, why? *Massad:* Will get back to you on this.

### **Whistleblower Fund**

*Valadao:* Why isn't the CFTC using leftover money from this fund? *Massad:* We would be happy to work on a way to utilize these funds.

### **CFTC Budget**

*Aderholt:* Are you able to meet hiring targets with recent funding increases? *Massad:* Our hiring levels are set based on the budget appropriated – they are not set based on need. Our responsibilities have dramatically increased because of Dodd-Frank. To continue to have the best derivatives markets in the world, Congress must make investments in the CFTC.

*Farr:* How many examinations were originally planned, but could not be undertaken because of the lack of resources? *Massad:* The Commission has passed on many examinations. Even for the two largest clearinghouses deemed systemically important, we cannot examine all of the things we want to. We cannot examine smaller clearinghouses.

*Palazzo:* \$17 million increase requested for technology spending – thoughts on storing data (i.e. consolidating, renting space, etc.)? *Massad:* We are looking at the most efficient way to store data. Today, we not only look at transactions data, but also messaging data. The CFTC had to reconstruct almost 400,000 orders for a recent spoofing case, and this required huge data capacity. We need to build our own capacity, but happy to cooperate with other agencies for options.